

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
SPECIAL EDUCATION APPEALS**

In Re: Student v.
Hudson Public Schools

BSEA # 1300513

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL ch. 71B), the state Administrative Procedure Act (MGL ch. 30A), and the regulations promulgated under these statutes.

On August 9, 2012, Parent in the above-referenced matter requested a Hearing before the BSEA. Thereafter, Hudson Public Schools (Hudson) requested a postponement of the Hearing, which request was verbally granted during a telephone conference call held on August 28, 2012. During the conference call the Parties agreed to have the case decided on submission of documents and arguments only. An Order issued on September 5, 2012 established September 14, 2012 as the deadline for the Parties to submit arguments and documents they wished for me to consider in rendering this decision. Hudson filed its legal argument and exhibits on September 13, 2012. Parent did not file any argument or documents following her initial Hearing Request. As such, I rely on her original Hearing Request to establish the parameters of the Hearing and ascertain Parent's position.

The official record of the hearing consists of documents submitted by Hudson marked as exhibits SE-1 through SE-3, Hudson's legal argument and Parent's Hearing Request. The record closed on September 14, 2012.

HEARING ISSUE:

Whether Hudson is obligated to convene a Team meeting for Student at Parent's request before Student's start of school at Wayside Academy.

POSITIONS OF THE PARTIES:

Parent's Position:

Parent asserts that the appropriate time to hold a Team meeting for Student is before he begins attending Wayside Academy. She is concerned that the IEP to be implemented at Wayside Academy take into account Student's issues, and address appropriate ways of disciplining Student and appropriate academic goals.

Hudson's Position:

Hudson states that nothing in the federal or Massachusetts special education law and regulations require it to convene the Team to discuss Student's IEP prior to the start of school, especially when a prior Bureau of Special Education Appeals (BSEA) Decision (#12-5963) ordered it to implement its December 2011–December 2012 IEP and placement in July 2012. According to Hudson, the appropriate time to hold Student's Team meeting, would be after Student started attending Wayside Academy and after his three-year re-evaluation, which Hudson proposed to advance, had been completed.

Hudson argued that only after the aforementioned evaluations have been completed and Wayside staff has had an opportunity to work with Student would the Team have new, meaningful information to discuss that takes into account Student's current performance.

FINDINGS OF FACT:

1. Student is a fifteen-year-old resident of Hudson, Massachusetts. He currently attends tenth grade at the Wayside Academy as a result of a Decision issued by the Bureau of Special Education Appeals on June 22, 2012 ordering Hudson to fully implement the IEP and placement.¹ (The Hearing in BSEA #12-5963 had taken place in April 2012.)
2. Student has been diagnosed with ADHD and PTSD and has been found eligible to receive special education.
3. Prior to entering Wayside, Student's education had been interrupted during the winter of 2012 as a result of a disciplinary incident at his previous placement.
4. During the summer of 2012, following the issuance of the Decision in BSEA #12-5963, Parent contacted Hudson and requested that a Team meeting be scheduled to discuss Student's IEP. At the time of her request, there were no new evaluation reports or new information available to the Team.
5. In e-mails between Hudson and Parent following Parent's request, Hudson declined to convene Student's Team.
6. On or about August 8, 2012, Parent renewed her request to have Student's Team convened before the start of the school year.
7. Parent filed a Hearing Request with the BSEA on August 9, 2012, requesting that the BSEA

¹ See *In Re: Hudson Public Schools*, BSEA # 12-5963 (Berman, 6/22/2012).

Order that Hudson reconvene the Team as [Parent] has requested and to hold an immediate IEP meeting at the placement that he is currently at, with Wayside staff present and with [Student's] whole Team at Wayside Academy before the start of the school year, (so we can add the appropriate and attainable goals and services from Wayside and to reflect Wayside's Academic goals for [Student] as they are VERY different now and compared to when he was at [his previous placement]).

... and to reflect Wayside's ways of discipline and academic goals. Instead of waiting until Dec[ember] 2012.

Every year Hudson pushes my son along, all in his detriment and I do not want another year to pass by without having a meeting where he currently is, Hudson placed him there without holding the appropriate placement meeting with Wayside staff present. The teachers are getting to know him well and I feel that it is appropriate for Hudson to respect AND honor my request and hold the appropriate IEP meeting. [Parent's Hearing Request].

8. On August 27, 2012, Hudson issued an N1 formally declining to convene the Team during the summer and instead proposing to advance Student's three-year re-evaluation to September 2012 and convene the Team meeting in October 2012 (SE-1; SE-3). (Student's three-year re-evaluation was not due until January 2013.)
9. During a telephone conference call on or about August 28, 2012, Hudson noted that Parent had not consented to advancing the three-year re-evaluation. Instead of agreeing to a school-based three-year re-evaluation, Parent preferred to proceed with an independent evaluation.
10. Via e-mail dated August 30, 2012, Hudson's counsel confirmed that all of Student's testing could be completed by Wayside Academy personnel (SE-2). Parent agreed to consider Hudson's proposal and agreed to respond later. As of September 13, 2012, Parent had not yet responded to Hudson's proposal.²
11. Hudson proposed to convene Student's Team on October 29, 2012, to review Student's progress at Wayside Academy, and if Parent consented to advance the evaluations, as an annual review/ re-evaluation meeting (SE-3).

² On August 29, 2012, Parent requested an independent neuropsychological evaluation and Hudson responded by filing a request for Hearing contesting the request and asserting that a neuropsychological evaluation had been conducted in June 2011. This issue is currently before a different BSEA Hearing Officer and therefore this Decision does not address the aforementioned issue (see BSEA # 1301510).

CONCLUSIONS OF LAW:

The Parties do not dispute that Student is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act³ (IDEA) and the state special education statute⁴. As such he is entitled to a free, appropriate public education (FAPE)⁵ and has a right to all the procedural safeguards guaranteed under the IDEA and Massachusetts Special Education Law and the regulations promulgated under federal and State laws.

Parent is concerned that Student's Team at Wayside Academy should meet before the beginning of the school year so as to address Student's academic goals and objectives as well as appropriate ways of disciplining Student in school. As the party seeking relief, Parent carries the burden of persuasion pursuant to *Schaffer v. Weast*, 126 S.Ct. 528 (2005)⁶, and must prove her case by a preponderance of the evidence. Also, pursuant to *Schaffer*, if the evidence is closely balanced, Parent will lose. *Id.*

The sole issue here is whether Hudson is mandated to convene Student's Team in response to Parental request following issuance of a BSEA decision and in the absence of any new information regarding Student's education and/or disability. I begin the analysis by turning to the IDEA.

34 CFR § 300.324(b)(1)(i) mandates that school districts convene the Team periodically but no less than once per year to review whether students are making progress toward their annual goals, and revise it as the Team deems appropriate to address:

- (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum;
- (B) The results of any re-evaluation conducted under § 300.303;
- (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
- (D) The child's anticipated needs; or
- (E) Other matters.

The aforementioned regulations set the minimum requirements regarding convening of the Team and leave open the possibility of convening for reasons other than those specifically stated. Similarly, the Massachusetts special education regulations require that a student's Team be convened within forty-five school working days after receipt of a parent's consent for an initial evaluation⁷; annually to review the Student's progress; following three-year re-

³ 20 USC 1400 *et seq.*

⁴ MGL c. 71B.

⁵ MGL c. 71B, ss. 1 (definition of FAPE), 2, 3.

⁶ *Schaffer v. Weast*, 126 S.Ct. 528 (2005) places the burden of proof in an administrative hearing on the party seeking relief.

⁷ "Within 45 school working days after receipt of a parent's written consent to a an initial evaluation or reevaluation, the school district shall : provide an evaluation; convene a Team meeting to review the evaluation data, determine whether the student requires special education and if required, develop an IEP in accordance with state

evaluations; to determine a student's placement; and within ten days of receipt of independent evaluations. See 603 CMR 28.04 and 603 CMR 28.05. A student's Team is also convened in the context of disciplining eligible students or any time that a change to the student's program and/or placement is contemplated. Nothing in the Massachusetts special education regulations prevents the Team from convening at any other reasonable time, including at the request of the Parent. The Team however, must have a purpose within the context of the provision of FAPE to an eligible student.

Furthermore, in interpreting the federal regulations, Hudson notes that in *Letter to Green*⁸, "the Office of Special Education (OSEP) has advised that Team meetings should be held whenever a material or substantial change in the student's programming is contemplated." *Letter to Green*, 22 IDELR 639 (OSEP 1995). Hudson takes the position that it is under no obligation to convene the Team when there is no new information or when no substantial changes to the IEP are considered simply because Parent desires convening of the Team.⁹

In the instant case, Hudson argued that there was no purpose for convening Student's Team over the summer prior to his entering Wayside, and further drew a distinction between the summer program attended by Student at Wayside and the regular school year program. According to Hudson, the academic expectations in the summer program were different as it was less demanding than the school year program. Hudson reasoned that Student's performance during the summer was not indicative of his performance and success during the regular school year. After consulting with Wayside Academy staff, Hudson concluded that it would make more sense to gather the Team once the school year was underway and the Team had some information about Student's performance before considering changes to his IEP.

Hudson argued that its offer to convene the Team in October (approximately eight weeks into Student's school year at Wayside) was reasonable especially when it had requested parental consent to advance Student's three-year re-evaluation, which would provide the Team current, accurate information about his performance and needs (SE-3). Hudson raised concern that Parent's refusal to consent to the evaluations could place the Team at a disadvantage. Nevertheless, it proposed to convene the Team on October 29, 2012, to review Student's progress and if Parent consented, to advance the evaluations, as an annual review/re-evaluation meeting.

I find nothing in the federal or state regulations to prevent convening of the Team at reasonable intervals for reasonable purposes. Similarly, nothing in the federal or state regulations mandates that a full Team be convened any time a parent desires it if there is no useful purpose, and such is the case here. In addition, I note that Hearing Officer Berman

and federal laws; and provide the parents with two copies of the proposed IEP and proposed placement, except that the proposal of placement may be delayed according to the provisions of 603 CMR 28.06(2)(e)....603 CMR 28.05(1).

⁸ This letter focuses on Team meetings where the location of placement is changed rather than stating a general rule.

⁹ Appendix A to 34 CFR Part 300, Question 20, (1999 regulations).

issued a Decision in July 2012 ordering Hudson to implement its IEP and transition plan for Student at Wayside Academy without any mention of the necessity of reconvening the Team before doing so.

While Parent's concerns are understandable and her request is not unreasonable, Hudson is under no obligation to convene the Team prior to the beginning of the school year given the facts of the instant case. Moreover, I find Hudson's offer to advance the three-year re-evaluation and convene the Team after the Wayside Academy staff has had an opportunity to work with Student and assess his strengths and weaknesses to be appropriate and reasonable. As such, Hudson is ordered to convene Student's Team by October 29, 2012 whether or not the evaluations have been completed.

ORDER:

Hudson is ordered to convene Student's Team by October 29, 2012.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: September 27, 2012

September 27, 2012

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS**

HUDSON PUBLIC SCHOOLS

BSEA # 1300513

BEFORE

**ROSA I. FIGUEROA
HEARING OFFICER**

**ALISIA ST. FLORIAN, ESQ., ATTORNEY FOR
HUDSON PUBLIC SCHOOLS
PARENT PRO-SE**